

**FEDERAL ELECTION COMMISSION**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR 7384**

DATE COMPLAINT FILED: May 16, 2018

DATE OF NOTIFICATION: May 23, 2018

DATE OF LAST RESPONSE: July 13, 2018

DATE OF ACTIVATION: October 18, 2018

ELECTION CYCLE: 2018

EXPIRATION OF SOL:

Earliest: March 27, 2023

Latest: May 30, 2023

**COMPLAINANT:**

Donald Scott Priest

**RESPONDENTS:**

Andrew Janz for Congress and Jay Petterson in his  
official capacity as treasurer  
Santa Clara County United Democratic Campaign  
and Prameela Bartholomeusz in her official  
capacity as treasurer

**RELEVANT STATUTES AND  
REGULATIONS:**

52 U.S.C. § 30104(b)

52 U.S.C. § 30120

11 C.F.R. § 109.37

11 C.F.R. § 110.11

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint alleges that a handwritten postcard supporting the election of Andrew Janz and opposing the election of his opponent Devin Nunes in California's Twenty-Second Congressional District did not contain a required disclaimer and constituted either an undisclosed in-kind contribution to Andrew Janz for Congress and Jay Petterson in his official capacity as treasurer ("Janz Committee") or unreported activity by the Janz Committee itself, in violation of

1 the Federal Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> The Complainant states  
2 that he was unable to determine who mailed the postcard, but references a "post-card party to  
3 benefit Mr. Janz at the Democratic Volunteer Center" ("DVC") in Palo Alto, California, held  
4 shortly after the postmark of the postcard in the Complaint.<sup>2</sup>

5 As set forth below, the available information indicates that a number of postcard writing  
6 events in support of Janz were held by the DVC, a component of the Santa Clara County United  
7 Democratic Campaign ("Santa Clara Committee"), a local party committee registered with the  
8 Commission.<sup>3</sup> The information further indicates that the postcards were handwritten by  
9 volunteers using addresses provided to the DVC by the Janz Committee and that the DVC paid  
10 for the postcards and postage.<sup>4</sup> As a result, it appears that the Santa Clara Committee may have  
11 made an undisclosed in-kind contribution to the Janz Committee in the form of coordinated  
12 communications and that the postcards may have required disclaimers. In view of the  
13 comparatively small amount in violation, however, we recommend that the Commission dismiss  
14 the allegations and close the file.

## 15 II. FACTUAL BACKGROUND

16 Andrew Janz was a candidate in the primary and general elections for California's  
17 Twenty-Second Congressional District in 2018.<sup>5</sup> Andrew Janz for Congress is his authorized

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<sup>1</sup> Compl. at 1-2 (May 16, 2018).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> Santa Clara County United Democratic Campaign Resp. at 1-2 (July 13, 2018) ("Santa Clara Committee Resp."). The Santa Clara Committee filed a response on behalf of the DVC.

<sup>4</sup> Santa Clara Committee Resp. at 1.

<sup>5</sup> Andrew Janz for Congress Resp. at 2 (July 13, 2018) ("Janz Resp."); Andrew Janz, Statement of Candidacy (May 1, 2017).

1 committee.<sup>6</sup> The Santa Clara Committee is a subordinate committee of the California  
2 Democratic Party.<sup>7</sup> The DVC is a volunteer-run office in Palo Alto, California, that is “funded  
3 by and through” the Santa Clara Committee.<sup>8</sup>

4 The postcard received by the Complainant is handwritten and postmarked April 23,  
5 2018.<sup>9</sup> It reads: “Dear Good Voter, The primary election is June 5th. Help elect local Democrat  
6 + Fresno County prosecutor Andrew Janz to replace Congressman Devin Nunes. Andrew is the  
7 son of immigrants. He will fight for working families. Vote for Andrew Janz!”<sup>10</sup>

8 The DVC postcard event identified in the Complaint took place on April 30, 2018, after  
9 the April 23 postmark on the postcard in the Complaint, but the Complainant alleges that “these  
10 hand-written post-cards are more prevalent than the one [he] received” and “hand-written post-  
11 cards were being done by multiple people/organizations.”<sup>11</sup>

12 In its Response, the Santa Clara Committee states that DVC volunteers scheduled and  
13 conducted ten “postcard writing events for the Janz campaign” from late March through late May

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<sup>6</sup> Andrew Janz for Congress, Statement of Organization (Apr. 25, 2017).

<sup>7</sup> Santa Clara Committee, Statement of Organization (Nov. 16, 2017).

<sup>8</sup> Santa Clara Committee Resp. at 1. The DVC describes itself as “a semi-autonomous project within the Santa Clara County Democratic Party and is independently funded and managed” and that most of its funds come from small, individual donations. *See* <https://demvolctr.org/about/>; Santa Clara Committee Resp. at 1-2. Further, the DVC’s donation website instructs donors to make donations to the DVC payable to the Santa Clara Committee but note “DVC” in the memo line. *See* <https://demvolctr.org/donate/>.

<sup>9</sup> Compl., Ex. 1.

<sup>10</sup> *Id.*

<sup>11</sup> Compl. at 1-2. The Complaint also includes information regarding a DVC postcard event on May 8, 2018. *See id.*, Ex. 5.

1 2018, before the June 2018 primary election.<sup>12</sup> The Santa Clara Committee does not specifically  
2 address the postcard in the Complaint but does not deny that the postcard was the product of one  
3 of the DVC postcard events, one of which was held on April 18, 2018, five days before the April  
4 23 postmark on the postcard in the Complaint.<sup>13</sup> According to the Santa Clara Committee, the  
5 postcards were written and addressed by volunteers by hand to addresses provided by Janz  
6 campaign.<sup>14</sup> The volunteers were provided “model language” for the message but “were free to  
7 personalize the message.”<sup>15</sup> Santa Clara identifies the amount paid by the DVC for postcards  
8 and stamps for each event, totaling \$2,599.80.<sup>16</sup> The number of postcards written is also  
9 identified for each event, ranging from 250 to 910 and totaling 6,190.<sup>17</sup>

10 The Santa Clara Committee acknowledges that it reported the postage expenses as its  
11 own “campaign expenses” and not “as a donation” to the Janz Committee.<sup>18</sup> Santa Clara  
12 disclosed no contributions to the Janz Committee, which in turn disclosed no contributions from

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<sup>12</sup> Santa Clara Committee Resp. at 1. The DVC’s website identifies at least seven additional postcard parties hosted for the Janz Committee before the general election in November 2018 that are not addressed in the Santa Clara Committee response. See <https://demvolctr.org/events/>.

<sup>13</sup> See Santa Clara Committee Resp. at 1.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 2 (stating that the Santa Clara Committee will amend its reports as needed). The Santa Clara Committee reported various disbursements for “postage” in 2018, and the dates and amounts appear to correspond with DVC’s postcard events in support of Janz. See, e.g., Santa Clara Committee Amend. 2018 May Monthly Report at 113-14, 116 (Feb. 6, 2019) (disclosing operating expenditures for postage between April 1 and April 30, when DVC hosted at least five identified events for the Janz Committee); Santa Clara Committee Amend. 2018 June Monthly Report at 158-61, 171 (Feb. 6, 2019) (disclosing operating expenditures for postage during May 1 through May 31, when DVC hosted at least four events for the Janz Committee).

1 Santa Clara or the DVC.<sup>19</sup> The Santa Clara Committee stated in its Response that it would  
2 review whether it should have disclosed in-kind contributions but, to date, it has not amended  
3 any reports to reflect such contributions.<sup>20</sup> The Santa Clara Committee also acknowledges the  
4 need to verify “whether the appropriate source of funds was used to pay the expenses, and if  
5 needed [it] will reallocate between state and federal funds to ensure the correct funds were  
6 used.”<sup>21</sup>

7 The Janz Committee asserts that it does not know who sent the postcard received by the  
8 Complainant.<sup>22</sup> It does not address any involvement with the DVC or the Santa Clara  
9 Committee but acknowledges that volunteers sent postcards on its behalf.<sup>23</sup> The Committee also  
10 contends that it reported postage expenses incurred by individual volunteers as in-kind  
11 contributions, and disclosure reports confirm this.<sup>24</sup> Between February and November 2018, the  
12 Committee reported receiving \$4,928.34 in postage and printing in-kind contributions from  
13 individuals.<sup>25</sup>

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<sup>19</sup> Neither the Santa Clara Committee nor the DVC reported making independent expenditures in support of Janz during the 2017-2018 election cycle.

<sup>20</sup> Santa Clara Committee Resp. at 2. The Santa Clara Committee’s original disclosure reports did not contain any in-kind contributions to the Janz Committee; however, its amended 30-Day Post-General Report includes a disbursement to Andrew Janz on November 26, 2018, for \$1,639.00 for “staff time.” See Santa Clara Committee Amend. 2018 30-Day Post-General Report at 86 (Feb. 6, 2019). The available information does not indicate whether the newly disclosed disbursement, which occurred several months after the DVC postcard events before the June 2018 primary, relates to the activity in the instant matter.

<sup>21</sup> Santa Clara Committee Resp. at 2.

<sup>22</sup> Janz Resp. at 1-2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3.

<sup>25</sup> See Andrew Janz for Congress, Disbursements for 2017-2018 Election Cycle, [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id)

**III. LEGAL ANALYSIS**

**A. Coordinated Expenditures**

The Act requires political committees to report contributions from other political committees, as well as the date and amount of any such contribution.<sup>26</sup> Under the Act, the terms “contribution” and “expenditure” include “anything of value” made by any person for the purpose of influencing an election.<sup>27</sup> The term “anything of value” includes in-kind contributions.<sup>28</sup> In-kind contributions result when goods or services are provided without charge or at less than the usual and normal charge,<sup>29</sup> and when a person makes an expenditure in cooperation, consultation or in concert with, or at the request or suggestion of a candidate or the candidate’s authorized committee or their agents.<sup>30</sup> In-kind contributions from permissible sources are subject to the Act’s contribution limits. Any person who is otherwise prohibited

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=C00638510&min\_date=01%2F01%2F2017&max\_date=12%2F31%2F2018&disbursement\_description=postage (search description “postage”) (totaled contributions all include memo text “in-kind received”).

<sup>26</sup> 52 U.S.C. § 30104(b)(3)(B).

<sup>27</sup> 52 U.S.C §§ 30101(8)(A)(i), 30101(9)(A)(i).

<sup>28</sup> 11 C.F.R. § 100.52(d).

<sup>29</sup> *Id.*

<sup>30</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

1 from making contributions to candidates under the Act or Commission regulations is prohibited  
2 from making an in-kind contribution in the form of paying for a coordinated communication.<sup>31</sup>

3 Expenditures that are coordinated with a candidate are treated as contributions to the  
4 candidate.<sup>32</sup> The Commission's regulations provide that a political party committee payment for  
5 a communication "coordinated with a candidate, a candidate's authorized committee, or an agent  
6 of either of the foregoing" must be treated as either an in-kind contribution to, or coordinated  
7 party expenditure on behalf of, the candidate.<sup>33</sup> To determine whether a communication  
8 constitutes a "party coordinated communication," Commission regulations apply a three-prong  
9 test.<sup>34</sup> First, the communication must be paid for by a political party committee or its agent.<sup>35</sup>  
10 Second, the communication must satisfy at least one of three content standards.<sup>36</sup> Finally, the  
11 communication must satisfy one of six conduct standards.<sup>37</sup>

12 The Complaint alleges that the Janz Committee received in-kind contributions in the form  
13 of postcards expressly advocating for the election of Janz.<sup>38</sup> Applying the Commission's three-  
14 prong test, the postcards appear to be coordinated communications which should have been  
15 reported as an in-kind contribution. The postcard received by the Complainant states "Help elect

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<sup>31</sup> See 52 U.S.C. §§ 30116(f), 30118(a); 11 C.F.R. § 109.22.

<sup>32</sup> 52 U.S.C. § 30116(a)(7)(B).

<sup>33</sup> 11 C.F.R. § 109.37(a), (b).

<sup>34</sup> 11 C.F.R. § 109.37(a)(1)-(3).

<sup>35</sup> 11 C.F.R. § 109.37(a)(1).

<sup>36</sup> 11 C.F.R. § 109.37(a)(2)(i)-(iii).

<sup>37</sup> 11 C.F.R. § 109.37(a)(3); *see also* § 109.21(d)(1)-(6).

<sup>38</sup> Compl. at 1-2, Ex. 1.

1 local Democrat + Fresno County prosecutor Andrew Janz to replace Congressman Devin Nunes”  
2 and “Vote for Andrew Janz!”<sup>39</sup> The postcard is postmarked April 23, 2018, which is in close  
3 proximity to the DVC postcard party held on April 18, 2018.<sup>40</sup> Given that the DVC paid for the  
4 postage and postcards, the payment prong is satisfied here.<sup>41</sup>

5 The content prong is also likely satisfied because the postcards appear to be public  
6 communications that expressly advocated for the election of Janz.<sup>42</sup> Public communications  
7 include a “mass mailing,” a mailing of more than 500 pieces of mail of “an identical or  
8 substantially similar nature within any 30-day period.”<sup>43</sup> Here, DVC volunteers wrote and  
9 addressed 680 postcards at the April 18, 2018, event, using “model language for the message,”  
10 although the volunteers were permitted to personalize the message.<sup>44</sup> Thus, the record supports a  
11 reasonable inference that the volunteers likely created more than 500 “substantially similar”  
12 postcards at the event and thus the postcards appear to have constituted a public

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<sup>39</sup> See *id.*, Ex. 1.

<sup>40</sup> *Id.*; Santa Clara Committee Resp. at 1.

<sup>41</sup> See Santa Clara Committee Resp. at 1.

<sup>42</sup> 11 C.F.R. § 109.37(a)(2)(ii); see *id.* § 100.22(a).

<sup>43</sup> 11 C.F.R. § 100.26 (defining public communication to include “mass mailing”); *id.* § 100.27 (defining mass mailing).

<sup>44</sup> Santa Clara Committee Resp. at 1.

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1 communication.<sup>45</sup> The "Vote for Andrew Janz!" message on the postcard satisfies the definition  
2 of expressly advocating.<sup>46</sup>

3 The conduct prong may also be satisfied here because the record shows that the Janz  
4 Committee was materially involved with the postcards paid for by the DVC.<sup>47</sup> Although the  
5 Janz Committee contends that it is unaware who sent the postcard received by the Complainant,  
6 the Santa Clara Committee states that the Janz Committee provided the addresses for the  
7 postcards paid for by the DVC.<sup>48</sup> Thus, the Janz Committee appears to have been materially  
8 involved in the decision regarding "[t]he intended audience for the communication."<sup>49</sup> Thus, all  
9 three prongs of the Commission's test for party-coordinated communications may be satisfied  
10 here. Therefore, the postage and the stamps supplied by the DVC at its postcard event likely  
11 should have been reported as in-kind contributions to the Janz Committee from the Santa Clara  
12 Committee, or its subcomponent, DVC.

13 As noted above, the Janz Committee has not disclosed any in-kind contributions from the  
14 DVC or the Santa Clara Committee. It is also unclear whether the DVC paid for the postcards  
15 and stamps with permissible funds. The Santa Clara Committee states that it "would verify

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<sup>45</sup> In the context of a mass mailing, "substantially similar" is defined to include communications that include substantially the same language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location. 11 C.F.R. § 100.27. The Commission has stated that its intent was to not make the definition of "substantially similar" so narrow that one sentence could be changed or one paragraph could be added to target a specific group and avoid coverage under this section. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,072 (July 29, 2002) (explanation and justification). Thus, the volunteers' personalization of the provided message would not preclude the application of 11 C.F.R. § 100.27 here.

<sup>46</sup> See 11 C.F.R. § 100.22(a) (defining expressly advocating to include "vote for the [candidate]").

<sup>47</sup> 11 C.F.R. §§ 109.37(3), 109.21(d)(2).

<sup>48</sup> Janz Resp. at 1-3; Santa Clara Committee Resp. at 1.

<sup>49</sup> 11 C.F.R. § 109.21(d)(2)(ii).

1 whether the appropriate source of funds was used to pay the expenses, and if needed [the  
2 Committee] will re-allocate between state and federal funds to ensure the correct funds were  
3 used.”<sup>50</sup> The record does not indicate whether the funds were federally permissible and, if not,  
4 whether the Santa Clara Committee re-allocated as stated.

5 Assuming all three prongs of the Commission’s test for party-coordinated  
6 communications have been met here, the potential amount in violation nevertheless does not  
7 warrant further use of Commission resources. The available record shows that the DVC hosted  
8 postcard events for the Janz Committee, but that the total cost of ten of those events was  
9 \$2,599.80.<sup>51</sup> Accordingly, given the likely *de minimis* amount in violation, we recommend that  
10 the Commission exercise its prosecutorial discretion and dismiss the allegations that the Santa  
11 Clara County United Democratic Campaign made unreported in-kind contributions in violation  
12 of 52 U.S.C. § 30104(b) and dismiss the allegations that Andrew Janz for Congress accepted  
13 unreported in-kind contributions in violation of 52 U.S.C. § 30104(b).<sup>52</sup>

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<sup>50</sup> Santa Clara Committee Resp. at 2.

<sup>51</sup> Santa Clara Committee Resp. at 1; <https://demvolctr.org/events/>. Even if the number of postcards sent (as indicated by the Santa Clara Committee) is extrapolated and applied to the remaining seven events, the likely amount in violation remains less than \$5,000. As a local party committee, the Santa Clara Committee and its affiliated state, district, and local committees were permitted to contribute a maximum of \$5,000 for Janz’s primary election and \$5,000 for his general election during the 2017-2018 election cycle. See 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.3(b)(3); FEC, *Contribution Limits for 2017-2018 Federal Elections*, <https://transition.fec.gov/info/contriblimitschart1718.pdf>.

<sup>52</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); Factual and Legal Analysis, MUR 6152 (Knollenberg for Congress Committee) (dismissal where record lacked information regarding cost of mailer that satisfied coordinated communication test but cost was likely *de minimis*). In addition, based on the available record, the in-kind contributions for postage reported by the Janz Committee from individual volunteers who mailed postcards, see *supra* at 5, appear to be for different activity (*i.e.*, the Janz Committee using Facebook to encourage individual volunteers to send postcards).

**B. Disclaimer**

The Complainant alleges that the postcard he received failed to include disclaimers in violation of 11 C.F.R. § 110.11(a)(1), (a)(2), and (b)(2).<sup>53</sup> The disclaimers required by these regulations are for public communications. As discussed above, the postcards appear to satisfy the definition of public communication.<sup>54</sup> However, given the apparent *de minimis* amount in violation as explained above, we recommend that the Commission dismiss the allegations that the Santa Clara County United Democratic Campaign and Andrew Janz for Congress violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11.<sup>55</sup>

**IV. RECOMMENDATIONS**

1. Dismiss the allegations that the Santa Clara County United Democratic Campaign and Prameela Bartholomeusz in her official capacity as treasurer violated 52 U.S.C. § 30104(b);
2. Dismiss the allegations that Andrew Janz for Congress and Jay Petterson in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
3. Dismiss the allegations that the Santa Clara County United Democratic Campaign and Prameela Bartholomeusz in her official capacity as treasurer and Andrew Janz for Congress and Jay Petterson in his official capacity as treasurer violated 52 U.S.C. § 30120 and 11 C.F.R. § 110.11;
4. Approve the attached Factual and Legal Analysis;
5. Approve the appropriate letters; and

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<sup>53</sup> Compl. at 1-2.

<sup>54</sup> See *supra* note 45 and accompanying text.

<sup>55</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); Factual and Legal Analysis, MUR 6832 (Grant Lally for Congress, Inc.) (dismissal where campaign committee's website and robocalls lacked disclaimers but *de minimis* amount at issue and committee took remedial measures); Factual and Legal Analysis, MUR 6665 (Alex Pires for U.S. Senate) (dismissal where campaign committee's website lacked disclaimer but *de minimis* amount at issue and committee took remedial measures).

6. Close the file.

2/27/2019

DATE

*Lisa J. Stevenson*

Lisa J. Stevenson  
Acting General Counsel

*Mark Allen*

Mark Allen  
Assistant General Counsel for Enforcement

*Anne B. Robinson*

Anne B. Robinson  
Attorney

Attachment:

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Andrew Janz for Congress and Jay Petterson MUR 7384  
in his official capacity as treasurer  
Santa Clara United Democratic Campaign and  
Prameela Bartholomeusz in her official capacity  
as treasurer

**I. INTRODUCTION**

The Complaint alleges that a handwritten postcard supporting the election of Andrew Janz and opposing the election of his opponent Devin Nunes in California's Twenty-Second Congressional District did not contain a required disclaimer and constituted either an undisclosed in-kind contribution to Andrew Janz for Congress and Jay Petterson in his official capacity as treasurer ("Janz Committee") or unreported activity by the Janz Committee itself, in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> The Complainant states that he was unable to determine who mailed the postcard, but references a "post-card party to benefit Mr. Janz at the Democratic Volunteer Center" ("DVC") in Palo Alto, California, held shortly after the postmark of the postcard in the Complaint.<sup>2</sup>

As set forth below, the available information indicates that a number of postcard writing events in support of Janz were held by the DVC, a component of the Santa Clara County United Democratic Campaign ("Santa Clara Committee"), a local party committee registered with the Commission.<sup>3</sup> The information further indicates that the postcards were handwritten by volunteers using addresses provided to the DVC by the Janz Committee and that the DVC paid

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<sup>1</sup> Compl. at 1-2 (May 16, 2018).

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1 for the postcards and postage.<sup>4</sup> As a result, it appears that the Santa Clara Committee may have  
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11 by and through" the Santa Clara Committee.<sup>8</sup>

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13 2018.<sup>9</sup> It reads: "Dear Good Voter, The primary election is June 5th. Help elect local Democrat

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1 + Fresno County prosecutor Andrew Janz to replace Congressman Devin Nunes. Andrew is the  
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12 23 postmark on the postcard in the Complaint.<sup>13</sup> According to the Santa Clara Committee, the  
13 postcards were written and addressed by volunteers by hand to addresses provided by Janz  
14 campaign.<sup>14</sup> The volunteers were provided “model language” for the message but “were free to  
15 personalize the message.”<sup>15</sup> Santa Clara identifies the amount paid by the DVC for postcards

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<sup>10</sup> *Id.*

<sup>11</sup> Compl. at 1-2. The Complaint also includes information regarding a DVC postcard event on May 8, 2018. *See id.*, Ex. 5.

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<sup>13</sup> *See* Santa Clara Committee Resp. at 1.

<sup>14</sup> *Id.*

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1 and stamps for each event, totaling \$2,599.80.<sup>16</sup> The number of postcards written is also  
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6 Santa Clara or the DVC.<sup>19</sup> The Santa Clara Committee stated in its Response that it would  
7 review whether it should have disclosed in-kind contributions but, to date, it has not amended  
8 any reports to reflect such contributions.<sup>20</sup> The Santa Clara Committee also acknowledges the  
9 need to verify “whether the appropriate source of funds was used to pay the expenses, and if

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 2 (stating that the Santa Clara Committee will amend its reports as needed). The Santa Clara Committee reported various disbursements for “postage” in 2018, and the dates and amounts appear to correspond with DVC’s postcard events in support of Janz. *See, e.g.*, Santa Clara Committee Amend. 2018 May Monthly Report at 113-14, 116 (Feb. 6, 2019) (disclosing operating expenditures for postage between April 1 and April 30, when DVC hosted at least five identified events for the Janz Committee); Santa Clara Committee Amend. 2018 June Monthly Report at 158-61, 171 (Feb. 6, 2019) (disclosing operating expenditures for postage during May 1 through May 31, when DVC hosted at least four events for the Janz Committee).

<sup>19</sup> Neither the Santa Clara Committee nor the DVC reported making independent expenditures in support of Janz during the 2017-2018 election cycle.

<sup>20</sup> Santa Clara Committee Resp. at 2. The Santa Clara Committee’s original disclosure reports did not contain any in-kind contributions to the Janz Committee; however, its amended 30-Day Post-General Report includes a disbursement to Andrew Janz on November 26, 2018, for \$1,639.00 for “staff time.” *See* Santa Clara Committee Amend. 2018 30-Day Post-General Report at 86 (Feb. 6, 2019). The available information does not indicate whether the newly disclosed disbursement, which occurred several months after the DVC postcard events before the June 2018 primary, relates to the activity in the instant matter.



1 needed [it] will reallocate between state and federal funds to ensure the correct funds were  
2 used.”<sup>21</sup>

3 The Janz Committee asserts that it does not know who sent the postcard received by the  
4 Complainant.<sup>22</sup> It does not address any involvement with the DVC or the Santa Clara  
5 Committee but acknowledges that volunteers sent postcards on its behalf.<sup>23</sup> The Committee also  
6 contends that it reported postage expenses incurred by individual volunteers as in-kind  
7 contributions, and disclosure reports confirm this.<sup>24</sup> Between February and November 2018, the  
8 Committee reported receiving \$4,928.34 in postage and printing in-kind contributions from  
9 individuals.<sup>25</sup>

### 10 III. LEGAL ANALYSIS

#### 11 A. Coordinated Expenditures

12 The Act requires political committees to report contributions from other political  
13 committees, as well as the date and amount of any such contribution.<sup>26</sup> Under the Act, the terms  
14 “contribution” and “expenditure” include “anything of value” made by any person for the

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<sup>21</sup> Santa Clara Committee Resp. at 2.

<sup>22</sup> Janz Resp. at 1-2.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3.

<sup>25</sup> See Andrew Janz for Congress, Disbursements for 2017-2018 Election Cycle, [https://www.fec.gov/data/disbursements/?two\\_year\\_transaction\\_period=2018&data\\_type=processed&committee\\_id=C00638510&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2018&disbursement\\_description=postage](https://www.fec.gov/data/disbursements/?two_year_transaction_period=2018&data_type=processed&committee_id=C00638510&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018&disbursement_description=postage) (search description “postage”) (totaled contributions all include memo text “in-kind received”).

<sup>26</sup> 52 U.S.C. § 30104(b)(3)(B).

1 purpose of influencing an election.<sup>27</sup> The term “anything of value” includes in-kind  
2 contributions.<sup>28</sup> In-kind contributions result when goods or services are provided without charge  
3 or at less than the usual and normal charge,<sup>29</sup> and when a person makes an expenditure in  
4 cooperation, consultation or in concert with, or at the request or suggestion of a candidate or the  
5 candidate’s authorized committee or their agents.<sup>30</sup> In-kind contributions from permissible  
6 sources are subject to the Act’s contribution limits. Any person who is otherwise prohibited  
7 from making contributions to candidates under the Act or Commission regulations is prohibited  
8 from making an in-kind contribution in the form of paying for a coordinated communication.<sup>31</sup>

9 Expenditures that are coordinated with a candidate are treated as contributions to the  
10 candidate.<sup>32</sup> The Commission’s regulations provide that a political party committee payment for  
11 a communication “coordinated with a candidate, a candidate’s authorized committee, or an agent  
12 of either of the foregoing” must be treated as either an in-kind contribution to, or coordinated  
13 party expenditure on behalf of, the candidate.<sup>33</sup> To determine whether a communication  
14 constitutes a “party coordinated communication,” Commission regulations apply a three-prong

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<sup>27</sup> 52 U.S.C §§ 30101(8)(A)(i), 30101(9)(A)(i).

<sup>28</sup> 11 C.F.R. § 100.52(d).

<sup>29</sup> *Id.*

<sup>30</sup> 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20; *see also Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976).

<sup>31</sup> *See* 52 U.S.C. §§ 30116(f), 30118(a); 11 C.F.R. § 109.22.

<sup>32</sup> 52 U.S.C. § 30116(a)(7)(B).

<sup>33</sup> 11 C.F.R. § 109.37(a), (b).

1 test.<sup>34</sup> First, the communication must be paid for by a political party committee or its agent.<sup>35</sup>  
2 Second, the communication must satisfy at least one of three content standards.<sup>36</sup> Finally, the  
3 communication must satisfy one of six conduct standards.<sup>37</sup>

4 The Complaint alleges that the Janz Committee received in-kind contributions in the form  
5 of postcards expressly advocating for the election of Janz.<sup>38</sup> Applying the Commission's three-  
6 prong test, the postcards appear to be coordinated communications which should have been  
7 reported as an in-kind contribution. The postcard received by the Complainant states "Help elect  
8 local Democrat + Fresno County prosecutor Andrew Janz to replace Congressman Devin Nunes"  
9 and "Vote for Andrew Janz!"<sup>39</sup> The postcard is postmarked April 23, 2018, which is in close  
10 proximity to the DVC postcard party held on April 18, 2018.<sup>40</sup> Given that the DVC paid for the  
11 postage and postcards, the payment prong is satisfied here.<sup>41</sup>

12 The content prong is also likely satisfied because the postcards appear to be public  
13 communications that expressly advocated for the election of Janz.<sup>42</sup> Public communications  
14 include a "mass mailing," a mailing of more than 500 pieces of mail of "an identical or

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<sup>34</sup> 11 C.F.R. § 109.37(a)(1)-(3).

<sup>35</sup> 11 C.F.R. § 109.37(a)(1).

<sup>36</sup> 11 C.F.R. § 109.37(a)(2)(i)-(iii).

<sup>37</sup> 11 C.F.R. § 109.37(a)(3); *see also* § 109.21(d)(1)-(6).

<sup>38</sup> Compl. at 1-2, Ex. 1.

<sup>39</sup> *See id.*, Ex. 1.

<sup>40</sup> *Id.*; Santa Clara Committee Resp. at 1.

<sup>41</sup> *See* Santa Clara Committee Resp. at 1.

<sup>42</sup> 11 C.F.R. § 109.37(a)(2)(ii); *see id.* § 100.22(a).

1 substantially similar nature within any 30-day period.”<sup>43</sup> Here, DVC volunteers wrote and  
2 addressed 680 postcards at the April 18, 2018, event, using “model language for the message,”  
3 although the volunteers were permitted to personalize the message.<sup>44</sup> Thus, the record supports a  
4 reasonable inference that the volunteers likely created more than 500 “substantially similar”  
5 postcards at the event and thus the postcards appear to have constituted a public  
6 communication.<sup>45</sup> The “Vote for Andrew Janz!” message on the postcard satisfies the definition  
7 of expressly advocating.<sup>46</sup>

8 The conduct prong may also be satisfied here because the record shows that the Janz  
9 Committee was materially involved with the postcards paid for by the DVC.<sup>47</sup> Although the  
10 Janz Committee contends that it is unaware who sent the postcard received by the Complainant,  
11 the Santa Clara Committee states that the Janz Committee provided the addresses for the  
12 postcards paid for by the DVC.<sup>48</sup> Thus, the Janz Committee appears to have been materially

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<sup>43</sup> 11 C.F.R. § 100.26 (defining public communication to include “mass mailing”); *id.* § 100.27 (defining mass mailing).

<sup>44</sup> Santa Clara Committee Resp. at 1.

<sup>45</sup> In the context of a mass mailing, “substantially similar” is defined to include communications that include substantially the same language, but vary in non-material respects such as communications customized by the recipient’s name, occupation, or geographic location. 11 C.F.R. § 100.27. The Commission has stated that its intent was to not make the definition of “substantially similar” so narrow that one sentence could be changed or one paragraph could be added to target a specific group and avoid coverage under this section. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,072 (July 29, 2002) (explanation and justification). Thus, the volunteers’ personalization of the provided message would not preclude the application of 11 C.F.R. § 100.27 here.

<sup>46</sup> See 11 C.F.R. § 100.22(a) (defining expressly advocating to include “vote for the [candidate]”).

<sup>47</sup> 11 C.F.R. §§ 109.37(3), 109.21(d)(2).

<sup>48</sup> Janz Resp. at 1-3; Santa Clara Committee Resp. at 1.

1 involved in the decision regarding “[t]he intended audience for the communication.”<sup>49</sup> Thus, all  
2 three prongs of the Commission’s test for party-coordinated communications may be satisfied  
3 here. Therefore, the postage and the stamps supplied by the DVC at its postcard event likely  
4 should have been reported as in-kind contributions to the Janz Committee from the Santa Clara  
5 Committee, or its subcomponent, DVC.

6 As noted above, the Janz Committee has not disclosed any in-kind contributions from the  
7 DVC or the Santa Clara Committee. It is also unclear whether the DVC paid for the postcards  
8 and stamps with permissible funds. The Santa Clara Committee states that it “would verify  
9 whether the appropriate source of funds was used to pay the expenses, and if needed [the  
10 Committee] will re-allocate between state and federal funds to ensure the correct funds were  
11 used.”<sup>50</sup> The record does not indicate whether the funds were federally permissible and, if not,  
12 whether the Santa Clara Committee re-allocated as stated.

13 Assuming all three prongs of the Commission’s test for party-coordinated  
14 communications have been met here, the potential amount in violation nevertheless does not  
15 warrant further use of Commission resources. The available record shows that the DVC hosted  
16 postcard events for the Janz Committee, but that the total cost of ten of those events was  
17 \$2,599.80.<sup>51</sup> Accordingly, given the likely *de minimis* amount in violation, the Commission

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<sup>49</sup> 11 C.F.R. § 109.21(d)(2)(ii).

<sup>50</sup> Santa Clara Committee Resp. at 2.

<sup>51</sup> Santa Clara Committee Resp. at 1; <https://demvolctr.org/events/>. Even if the number of postcards sent (as indicated by the Santa Clara Committee) is extrapolated and applied to the remaining seven events, the likely amount in violation remains less than \$5,000. As a local party committee, the Santa Clara Committee and its affiliated state, district, and local committees were permitted to contribute a maximum of \$5,000 for Janz’s primary election and \$5,000 for his general election during the 2017-2018 election cycle. See 52 U.S.C. § 30116(a)(2)(A); 11 C.F.R. § 110.3(b)(3); FEC, *Contribution Limits for 2017-2018 Federal Elections*, <https://transition.fec.gov/info/contriblimitschart1718.pdf>.

1 exercises its prosecutorial discretion and dismisses the allegations that the Santa Clara County  
2 United Democratic Campaign made unreported in-kind contributions in violation of 52 U.S.C.  
3 § 30104(b) and dismisses the allegations that Andrew Janz for Congress accepted unreported in-  
4 kind contributions in violation of 52 U.S.C. § 30104(b).<sup>52</sup>

5 **B. Disclaimer**

6 The Complainant alleges that the postcard he received failed to include disclaimers in  
7 violation of 11 C.F.R. § 110.11(a)(1), (a)(2), and (b)(2).<sup>53</sup> The disclaimers required by these  
8 regulations are for public communications. As discussed above, the postcards appear to satisfy  
9 the definition of public communication.<sup>54</sup> However, given the apparent *de minimis* amount in  
10 violation as explained above, the Commission dismisses the allegations that the Santa Clara  
11 County United Democratic Campaign and Andrew Janz for Congress violated 52 U.S.C. § 30120  
12 and 11 C.F.R. § 110.11.<sup>55</sup>

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<sup>52</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); Factual and Legal Analysis, MUR 6152 (Knollenberg for Congress Committee) (dismissal where record lacked information regarding cost of mailer that satisfied coordinated communication test but cost was likely *de minimis*). In addition, based on the available record, the in-kind contributions for postage reported by the Janz Committee from individual volunteers who mailed postcards, *see supra* at 5, appear to be for different activity (*i.e.*, the Janz Committee using Facebook to encourage individual volunteers to send postcards).

<sup>53</sup> Compl. at 1-2.

<sup>54</sup> See *supra* note 45 and accompanying text.

<sup>55</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985); Factual and Legal Analysis, MUR 6832 (Grant Lally for Congress, Inc.) (dismissal where campaign committee's website and robocalls lacked disclaimers but *de minimis* amount at issue and committee took remedial measures); Factual and Legal Analysis, MUR 6665 (Alex Pires for U.S. Senate) (dismissal where campaign committee's website lacked disclaimer but *de minimis* amount at issue and committee took remedial measures).